

REMARKS

This responds to the Final Office Action mailed on April 15, 2008.

No claims are amended, claims 2, 6, 18, 22, 24, 28, 31, and 33 have previously been canceled, and claims 44-49 are added; as a result, claims 1, 3-5, 7-17, 19-21, 23, 25-27, 29-30, 32, and 34-49 are now pending and subject to examination in this application.

Support for the newly added claims 44-49 can be found in the specification as follows:

Claim 44---Page 6, lines 9-15; page 20, lines 15-20.

Claim 45---Page 7, lines 16-18; page 25, line 1.

Claim 46---Page 16, lines 21-23.

Claim 47---Page 17, lines 1-2.

Claims 48, 49---Page 21, lines 4-10.

§103 Rejection of the Claims

Claims 1, 4-5, 7-9, 15-17, 19, 21, 23, and 38-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantyne et al. (U.S. 5,867,821) in view of Evans (U.S. Patent No. 5,924,074), and further in view of Kilgore et al. (U.S. Publication No. 2002/0072911).

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantyne et al. (U.S. 5,867,821) in view of Evans (U.S. Patent No. 5,924,074), in view of Kilgore et al. (U.S. Publication No. 2002/0072911), and further in view of Walker et al. (U.S. Patent No. 6,302,844).

Claims 10-14 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantyne et al. (U.S. 5,867,821) in view of Evans (U.S. Patent No. 5,924,074), in view of Kilgore et al. (U.S. Publication No. 2002/0072911), and further in view of Chesanow ("PDAs for Doctors: Your Ticket to Fast, Flawless Prescribing").

Claims 25-27, 29-30, 37, and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantyne et al. (U.S. 5,867,821) in view of Kilgore et al. (U.S. Publication No. 2002/0072911), and further in view of Milner (U.S. Patent No. 6,339,410).

Claims 32, 34, and 43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantyne et al. (U.S. 5,867,821), in view of Felsher (U.S. Publication No. 2002/0010679), in

view of Kilgore et al. (U.S. Publication No. 2002/0072911), and further in view of Milner (U.S. Patent No. 6,339,410).

Claims 35 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantyne et al. (U.S. 5,867,821) in view of Kilgore et al. (U.S. Publication No. 2002/0072911).

In summary, the claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantyne et al. (U.S. 5,867,821) in view of Kilgore et al. (U.S. Publication No. 2002/0072911), and in view of several other references, and in particular, in view of Evans (U.S. Patent No. 5,924,074). The Applicant respectfully traverses these rejections.

None of the cited references disclose all the features of the claimed subject matter. Specifically, not one of the three primary cited references discloses a mobile terminal on which ergonomic actuators are electronically displayed on the display screen of the mobile terminal, wherein each ergonomic actuator is large enough to allow actuation via a user's finger. Moreover, the rationale provided by the Final Office Action for combining the references does not establish a *prima facie* case of obviousness. Consequently, the Applicant respectfully submits that the rejection of the claims is in error, and respectfully requests the withdrawal of the rejection.

Ballantyne relates to a mobile device in the form of a personal data assistant (PDA) with a touch screen.¹ However, the touch screen of the PDA uses pen-based computer technology.² There is no disclosure of an ergonomic actuator that is large enough to allow actuation via a user's finger.

Evans relates to a medical record system with a graphical user interface including a touch screen that uses pen-based technology.³ There is no disclosure of an ergonomic actuator that is large enough to allow actuation via a user's finger.

Kilgore relates to a system for tracking a patient in a medical facility. The system includes a stationary remote terminal with a touch sensitive screen for which a user's finger can serve as the pointing device.⁴ There is no disclosure of a mobile terminal in Kilgore.

¹ Ballantyne, Abstract; column 9, line 19.

² *Id.*, col. 14, lines 24-26.

³ Evans, Abstract.

⁴ Kilgore, ¶ [0037].

The Applicant respectfully submits that the Final Office Action has failed to establish a *prima facie* case of obviousness. Regarding Ballantyne and Evans, the two references that relate to mobile or portable devices, both employ pen-based technology, apparently so that smaller icons can be used on the smaller display screens of the mobile devices. Kilgore, the only reference that notes that a user's finger can be used to actuate a touch sensitive screen, does not teach use of such screens on mobile devices. Moreover, Kilgore only relates to finger-actuated icons on non-mobile devices with a screen appreciably larger than a screen on a mobile device.

Consequently, the Applicant respectfully submits that it would not have been obvious to one of skill in the art at the time that the invention was made to place ergonomic actuators that are large enough to be actuated by a user's finger on a mobile device. The Kilgore reference relates to a user's finger actuation only because it has the larger display screen that is associated with a non-mobile device. The Ballantyne and Evans references effectively teach that mobile devices do not use their highly limited display screens for larger finger-touch actuators. Instead, Ballantyne and Evans use pen-based technology that allow smaller icons on the relatively small display screen of a mobile device.

Additionally, the rationale provided in the Final Office Action for combining the three references of record does not establish a *prima facie* case of obviousness. First, the Final Office Action states that such a combination would have been obvious to one of skill in the art because there would have been a motivation to organize patient data. However, the Appellant respectfully submits that such a general motivating factor cannot establish a *prima facie* case of obviousness.⁵ Moreover, the Final Office Action fails to point out any relevant relationship between an ergonomic indicator that is large enough to be actuated by a user's finger and the organization of patient data. The Applicant respectfully submits that there is no relevant relationship. That is, patient data can be organized just as easily whether a pen-based technology is used or a finger-based technology is used. Consequently, the rationale of the Final Office

⁵ See *In re Lee*, 277 F.3d 1338, 1342-44 (Fed. Cir. 2002) (There must be objective evidence and specific factual findings with respect to the motivation to combine references). See also *Ecolochem v. Southern California Edison Co.*, 277 F.3d 1361, 1372 (Fed. Cir. 2002) (broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence of obviousness).

Action fails, and with that failure so goes the argument in the Final Office Action that it would have been obvious to one of skill in the art to combine the references of record.

Secondly, the rationale put forth in the Final Office Action contends that one of skill in the art would have been motivated to combine the cited references because it would have allowed a user to activate certain functions by touching portions of the screen. The Applicant respectfully submits that this rationale, like the previous rationale, fails to establish a *prima facie* case of obviousness. At least one problem with this rationale is that both the Evans and Kilgore references provide touch-type interfaces---one for large screens and the other for small screens. So, one of skill would not be lead to combine the references on the basis of touch screen capability. Moreover, the references conflict regarding the size of the screens for which finger-actuated icons are suitable. Consequently, the Final Office Action has failed to establish a *prima facie* case of obviousness, and the Applicant respectfully requests the withdrawal of the rejection of the claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 371-2140 to facilitate prosecution of this application.

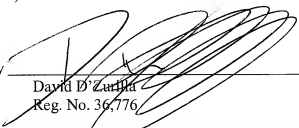
If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date December 8, 2008

By



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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 8th day of December, 2008.

/ Jonathan Ferguson /

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